IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21143 OF 2005

Between:

Mohd.Shareef, S/o.Mohd.Shaik Ali,

Aged 58 years, Dafedar, working in the

O/o.Revenue Divisional Office, Medak,

Medak District.

..... PETITIONER

AND

The District Collector,

Medak at Sanga Reddy

And another.

....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

RAMESH RANGANATHAN

WRIT PETITION No.21143 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

The unsuccessful applicant in O.A.No.841 of 2005 on the file of A.P. Administrative Tribunal is the petitioner herein. The petitioner was working as Dafedar in the 2nd respondent office. It appears that he was appointed in the service in the year 1965 and at the time of his appointment his date-of-birth was recorded as 20.05.1941. The petitioner received a memo from the 2nd respondent dated 07.01.2005 stating that on verification of the Service Register of the petitioner, it was found that his date-of-birth was tampered as 20.05.1947, as a consequence of which he was continuing in service even after the age of superannuation, which is 60 years. The said memo called upon the petitioner to submit the proof in support of his date-of-birth. The petitioner submitted documents i.e. Life Insurance Policy and the Pilgrim Pass indicating that the petitioner undertook a pilgrimage of Hijri some time in the year 2003, wherein his date-of-birth was shown as 20.05.1947. The 2nd respondent was not satisfied with the material and therefore issued proceedings dated 27.01.2005 (report) stating that on examination of the service record, the date-of-birth is clearly tampered and the proof produced by the petitioner could not be relied upon in support of his plea and consequently requested the 1st respondent to take appropriate action. On the basis of the said report, the

1st respondent, it appears, directed the 2nd respondent to retire the petitioner treating his date-of-birth as 20.05.1941 and recover the excess salary paid to the petitioner. Accordingly, the 2nd respondent issued a notice dated 18.02.2005 to the petitioner, which is as follows:

> "The District Collector, Medak vide reference cited, has requested to take action for the retirement of the individual as on the actual date of retirement while treating the Date of Birth as 20-5-1941 and recover the excess amounts paid to him till to date. Therefore Sri Mohd.Shareef Defedar of this office is hereby directed to take notice that he is due to retire from service on attaining the age of superannuation i.e., (60) years on
> 31-05-2001 while treating the date of birth as 20-5-1941 and he can not be allowed to continue in service after
> 28-2-2005 A.N."

Challenging the same, the petitioner approached the A.P.Administrative Tribunal unsuccessfully. The Tribunal examined the original service certificates of the petitioner and recorded a finding as follows:

> "…… From the perusal of the Service Register of the applicant, it is seen that his date of birth was originally recorded as 20.5.1941 and subsequently, the year of birth was corrected as 1947, but, without being authenticated. Thus, it

> is seen that initially, when the applicant was appointed, his date of birth was shown as 20.5.1941; the correction was made later on, and there is no documentary evidence to prove that any correction was made under the orders of any competent authority……"

Unfortunately, the proceedings dated 25.02.2005 were not challenged before the Tribunal.

When the matter is taken up, learned counsel for the petitioner submitted that though the Tribunal did not have an occasion to deal with the issue of recovery of the salary paid to the petitioner between 01.06.2001 to 28.02.2005, the petitioner would be satisfied if the recovery proposed by the respondents is declared as illegal, since the petitioner did in fact work during the above-mentioned period, irrespective of the fact whether the decision of the respondents to retire him from service on 28.02.2005 is illegal or not.

Heard the learned Government Pleader.

Admittedly, the petitioner did work during the period in dispute referred to earlier. In the circumstances, we deem it appropriate that the ends of justice would be met by directing the respondents not to recover the salary, which was already paid to the petitioner between the period commencing from 01.06.2001 and ending with 28.02.2005. In all other respects the order of the Tribunal, in our view, does not call for any interference.

Accordingly, the writ petition is disposed of at the admission stage itself.

JUSTICE J.CHELAMESWAR

JUSTICE RAMESH RANGANATHAN

17th OCTOBER, 2005

PGS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

RAMESH RANGANATHAN

WRIT PETITION No.21143 OF 2005

(Per Sri Justice J.Chelameswar)

17th OCTOBER, 2005